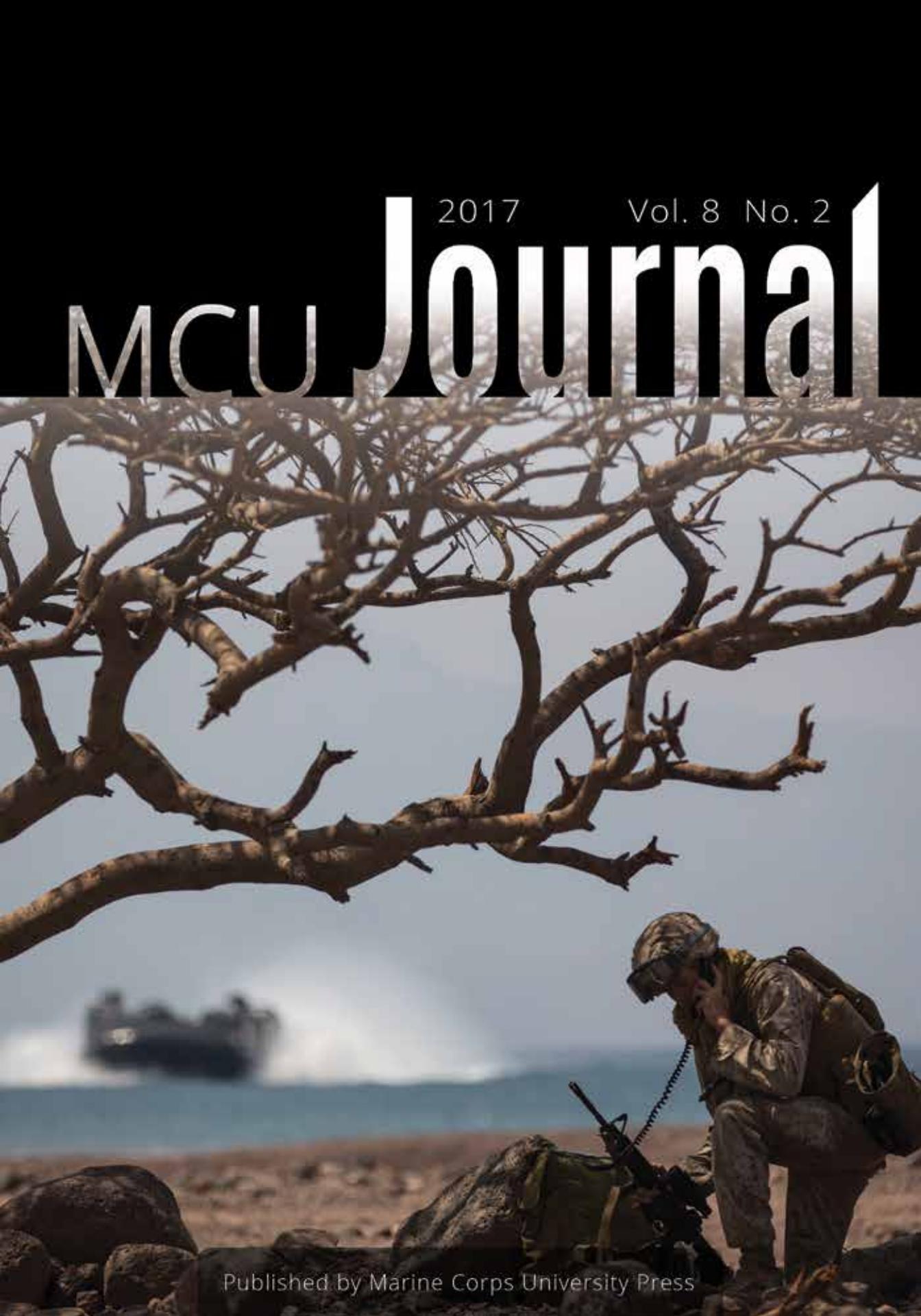


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A large, gnarled tree with many bare branches dominates the upper half of the image. In the lower right, a Marine in camouflage gear is kneeling, looking through a pair of binoculars. In the distance, a landing craft is visible on the water. The background shows a hazy, distant shoreline.

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Winning the War and Winning the Peace

Reconciling Occupation Law and the *Small Wars Manual*

Colonel Joseph A. Lore

Abstract: The *Small Wars Manual*, first published in 1940, documents hard lessons learned from the Marine Corps' involvement in small-scale conflicts during the first half of the twentieth century. Comprising the combined experience of a generation of Marine Corps leaders, the *Small Wars Manual* derives those lessons from Marine expeditions to places such as the Philippines, Cuba, Haiti, Nicaragua, and the Dominican Republic. While many of the principles contained in the *Small Wars Manual* chapter on military government remain relevant to current and future stability operations, the manual must be updated to ensure that planners and commanders meet the requirements of international law.

Keywords: military government; occupation law; Operation Iraqi Freedom; OIF; post-conflict operations; small-scale conflicts; *Small Wars Manual*; stability operations; tactics, techniques, and procedures; TTPs

Beginning on 20 March 2003, following four months of buildup and preparation in Kuwait, U.S. and British forces attacked Iraq, forcing Saddam Hussein's conventional forces from the battlefield. As more of the country fell, the Coalition killed, captured, or drove off the remnants

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of Hussein's government and Ba'ath party leadership, leaving Iraq in a political and administrative vacuum. Almost immediately, U.S. and British commanders faced the realities and responsibilities of military occupation. As Congressional Research Service national defense specialist Steve Bowman reported to Congress, "With the onset of widespread looting and the breakdown of public services (electricity, water) in the cities, Coalition forces were confronted with the challenges of restoring public order and infrastructure even before combat operations ceased."¹ The experience of commanders on the ground validated Bowman's assessment. The commander of 1st Battalion, 7th Marines, Lieutenant Colonel Christopher C. Conlin, noted upon entering Baghdad in April 2003: "In a blinding flash, we had become the local government, the utilities, the banks, the information bureau, the health care provider, the police, the court system, even the dogcatchers." For Lieutenant Colonel Conlin, sending in 1,000 servicemembers to control a dense population on measure with Manhattan Island seemed to be an overwhelming task, but one that had to be done because, as he said, "We were it."²

Experiences such as those of the 1st Battalion, 7th Marines, in Baghdad are not a new dimension of warfare. In fact, by March 2003, the United States had amassed considerable experience with military occupations, the result of numerous expeditions to protect U.S. personnel and interests in the Caribbean and the Pacific. Moreover, an occupier's legal obligations were enumerated in several treaties and principles of international law. According to James Jay Carafano,

The military's role in post-conflict activities is limited but vital.

. . . In any post-conflict operation, the United States will have moral and legal obligations to restore order, provide a safe and secure environment for the population, ensure that people are being fed, and prevent the spread of infectious disease. . . .

Although the military should be in charge at the outset, even before the end of the conflict, they should work closely with allies, federal agencies, and nongovernmental agencies.³

Yet despite these well-established obligations, the Coalition forces lacked detailed planning guidance for Phase IV stability and support operations.⁴ Consequently, some leaders drew upon the lessons contained in the Marine Corps' *Small Wars Manual* (Fleet Marine Force Reference Publication [FMFRP] 12-15).⁵

The manual, first published in 1940, presents hard lessons learned from the Marine Corps' involvement in small-scale conflicts during the first half of the twentieth century. Comprising the combined experience of a generation of Marine Corps leaders, the manual derives those lessons from Marine expeditions to places such as the Philippines, Cuba, Haiti, Nicaragua, and the Domin-

ican Republic. This collection of tactics, techniques, and procedures (TTPs) helps commanders at the tactical level (primarily from the company through division levels) address a wide variety of issues, including the establishment and administration of military government during the course of an occupation.

This article will demonstrate that many of the principles contained in the manual's chapter 13 on military government remain relevant to current and future stability operations. However, the *Small Wars Manual* must be updated to ensure that tactical commanders meet the requirements of international law. Beginning with the enduring themes from chapter 13, the article will then consider the manual's TTPs in light of the commander's international treaty obligations.⁶ Finally, by using the early stages of Operation Iraqi Freedom to expose the tensions between occupation law and the American policies for promoting stability, this article will offer suggestions for supplementing the manual's chapter on military government.

Enduring Themes

The main themes of chapter 13 of the *Small Wars Manual* are twofold: the primacy of the military leader commanding a portion (or totality) of foreign territory and the importance of planning for occupation. Specifically, chapter 13 states that military government relates to the "powers, duties and needs" of an officer who intervenes in the affairs of a foreign country, under conditions requiring military control over the occupied area.⁷ According to the manual, the broad purpose of the occupation is to "maintain order and protect life and property in the immediate theater of military operations."⁸ The manual further defines *military government* as "the exercise of military jurisdiction by a military commander, under the direction of the President, with the express or implied sanction of Congress, superseding as far as may be deemed expedient, the local law."⁹ As for planning, the *Small Wars Manual* strongly encourages commanders to create a separate and distinct civil affairs staff to develop detailed plans for administering the occupied territory, "thus avoiding the interference with the military functions of the usual staff sections," while still maintaining unity of effort.¹⁰

Not surprisingly, both themes are applicable today. As a number of scholars at the Council on Foreign Relations noted in an independent task force report, "The military on the ground represents the only capability to manage the impact of a leadership vacuum and head off a rapid spiral into lawlessness and human tragedy." Moreover, they acknowledged that there might be civilians who are talented or experienced, possibly more so than their military counterparts, but "the military always will have the main responsibility for establishing and maintaining public order, security, and emergency services in an immediate post-combat setting."¹¹ Scholars, observers, and officers agree that occupation

forces, by necessity, are the only ones to provide the “focal point” for the multifarious demands related to stability operations.¹²

In June 2017, the Department of Defense (DOD) revalidated these themes in *DOD Instruction (DODI) 3000.05, Stability Operations*. Recognizing the role of military occupation in establishing order and advancing U.S. interests and values, this instruction broadly defines *stability operations* as “activities conducted outside the United States in coordination with other instruments of national power to maintain or reestablish a safe and secure environment, provide essential governmental services, emergency infrastructure reconstruction, and humanitarian relief.”¹³ Next, *DODI 3000.05* establishes stability operations as a core mission for U.S. forces, declaring “that the Department of Defense shall be prepared to conduct with proficiency equivalent to combat operations.”¹⁴ Finally, *Stability Operations* authorizes occupation forces to carry out the immediate goals of stability, specifically by providing security, restoring or providing essential services, repairing critical infrastructure, and meeting humanitarian needs.¹⁵

Occupation Law

Notwithstanding the relevance of these themes to current and future stability operations, the *Small Wars Manual*’s definition of *military government* is premised upon sovereignty passing “into the hands of the commander of the occupying forces.”¹⁶ This vague definition and some of the follow-on text in the chapter are inconsistent with principles of international law and only superficially address the occupying power’s authority, obligations, and limitations. The manual was written in a different era using operations from a time in American history when the United States and its military had a different relationship to other countries, especially with Latin America and the international community. It provides good tactical information, but on legal issues it lacks the modern perspective commanders need.

Notably, the *Small Wars Manual* does not explain why the commander’s burdens are so formidable, or why Coalition leaders experienced such an overwhelming assortment of responsibilities following the collapse of Baghdad. There are three sources of the manual’s deficiency. First, the manual did not incorporate the preexisting international law codified by the Hague Convention Respecting the Laws and Customs of War on Land (Hague Convention IV of 1907), specifically failing to alert commanders to the limitations on their authority or their legal obligations toward the civilian population. Rather, the *Small Wars Manual* advises commanders that “it is decidedly to the *military advantage* of the occupying forces to establish a strong and just government, such as will preserve order, and as far as possible, *pacify the inhabitants*.”¹⁷ Although this may be true tactically and operationally, the manual’s emphasis on military gov-

ernment as a means for achieving some greater strategic objective, rather than safeguarding the local population, directly conflicts with the legal principles of Hague Convention IV of 1907. Second, the manual was published before the creation of the United Nations and subsequent ratification of the 1949 Geneva Convention (IV). Therefore, the manual could not feasibly address the commander's occupation duties pursuant to the treaties and the new principles of international law that emerged from World War II. Finally, given the date of publication, the *Small Wars Manual* could not address the importance of interagency operations in *nation building*, defined as the "use of armed force in the aftermath of a conflict to underpin an enduring transition to democracy."¹⁸

Historically, the law of military occupation has been a component of the *law of war*. Per DODI 2311.01E, the law of war is that "part of international law that regulates the conduct of armed hostilities," encompassing "all international law for the conduct of hostilities binding on the United States or its individual citizens, including treaties and international agreements to which the United States is a party, and applicable customary international law."¹⁹ Accordingly, international law establishes when and how military occupations are conducted.²⁰ Occupation law's main objective is to address a society's humanitarian and penal law requirements during and immediately after combat operations while forces are in foreign territory.²¹ These laws "set forth a series of duties and obligations for the parties involved . . . to ensure minimal protection of the civilian population and favor the stabilization of security and living conditions in the territory under the control of invading forces."²² Thus, international law acknowledges that there is an aspect of military necessity regarding occupation, but it also reminds commanders that their forces cannot ignore the needs of those being occupied.

The definition of *occupation* has evolved during the past century. Section III of the Hague Regulations begins with a narrow definition of occupation and establishes the parameters for implementing and maintaining military authority in enemy territory. Specifically, Article 42 states that "territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised."²³ As a matter of policy and international law, the U.S. Army's *The Law of Land Warfare* (Field Manual [FM] 27-10) adopted this definition verbatim.²⁴ Consequently, FM 27-10 defines occupation as "invasion plus taking firm possession of enemy territory for the purpose of holding it."²⁵ Occupation is a question of fact that "presupposes a hostile invasion, resisted or unresisted, as a result of which the invader has rendered the invaded government incapable of publicly exercising its own authority, and that the invader has successfully substituted its own authority for that of the legitimate government in the territory invaded."²⁶ Land is considered occupied when the following three criteria are met: there is an international armed conflict, a foreign military

force has made an incursion into enemy territory, and this force exerts control over the population of the territory.²⁷

Common Article 2 of the Geneva Convention defines *international armed conflict* and presents the broadest view of occupation, omitting the need for hostilities and therefore applying the law “to all cases of partial or total occupation of the territory,” even if the invasion and subsequent occupation is unopposed.²⁸ Put another way, occupation is effective control by a state or international organization over the territory to which that power has no sovereign title, and without the consent of the government of that territory.²⁹ The *Small Wars Manual* is actually consistent with this view, noting that although “military government is designed principally to meet the conditions arising during a state of war,” it may also apply “where the inhabitants of the country were not characterized as enemies and where war was neither declared nor contemplated.”³⁰ Therefore, much like the Fourth Geneva Convention’s broader definition, the manual acknowledges that occupation may occur after hostilities, or as the result of threats of force, coercion, economic sanctions, or even by the invitation of a sovereign nation struggling to maintain order within its borders.

International law, unlike the manual, regards the occupier’s authority as “essentially provisional,” with no impact on the ultimate sovereignty of the occupied territory.³¹ Legally, the occupying power serves as a trustee with “only temporary managerial powers” for administering “the territory on behalf of the sovereign.”³² Occupation is, therefore, distinct from conquest or subjugation, which terminates sovereignty through annexation or via the terms of a peace treaty.³³

The distinction between occupation and subjugation or conquest is an important one, highlighting an underlying flaw in the current chapter 13 of the *Small Wars Manual*; namely, the premise that military occupation automatically equates to the transfer of sovereignty. As is discussed in more detail below, international law limits an occupier’s authority to restore and ensure public order and safety, permitting “tinkering on the edges of societal reform . . . not a license to reform.”³⁴ Therefore, occupation law is never the basis for changing the form of government in the occupied territory.

The disparity between the authority to tinker and the license to reform apparently results from the manual’s foundational experiences, mainly the invasions of such places as Cuba, Haiti, and the Dominican Republic, where Marines defeated and displaced the existing governments and established new ones more favorable to U.S. foreign interests. In the early twentieth century, the United States emerged from the effects of the Civil War industrially and materially stronger with a larger population base. It was indeed a world power, but one new to the international scene. President Theodore Roosevelt wanted to use U.S. power, as would his successor President Howard Taft, in Latin

America. The Roosevelt Corollary to the Monroe Doctrine converted those desires into policy, as the United States acted aggressively in Spanish-speaking countries near North America during the first decades of the twentieth century. Such actions today would violate international law, specifically Article 2 of the UN Charter.³⁵ At the time, however, the Marines' actions to conquer and subject territory were more akin to the Allied acceptance of unconditional surrender by Germany at the end of World War II. Ironically, although some regard the postwar U.S. actions in Germany as a textbook example for military occupation, it was not.

The United States argued vehemently that occupation law, as codified by the Hague Regulations, should not apply to operations in Germany.³⁶ Specifically, the United States noted that Germany's force had been totally defeated, its national institutions had disintegrated, and that none of Germany's allies challenged the Allied occupation.³⁷ With the German state extinguished, the Allies were free to annex Germany, and more importantly, eradicate Nazism and implement the political reforms that were essential to stabilizing the country and the region.³⁸ Therefore, the Marines' actions in Cuba, Haiti, and the Dominican Republic had similar effects, essentially destroying the previous states and institutions, leaving no one to serve as sovereign when the Marines departed. Like the Allies in Germany at that point, the Marines had annexed those territories and were sovereign. Accordingly, occupation law no longer applied, and the Marines were free to change local law and implement the form of government that was consistent with U.S. foreign policy goals. In fact, without the creation of the circumstances that justified annexation under international law, specifically Hague Regulation 43, the United States would have limited authority to change the existing government structure in any of those countries.

In contrast, U.S. actions in postwar Japan were more consistent with the principles of occupation law. Although the United States initially planned to force Japan's unconditional surrender, Army General Douglas MacArthur moderated that position slightly, allowing the emperor and much of the Japanese political structure to remain intact. General MacArthur had several good strategic, operational, and tactical reasons for this approach, most notably the significant language and cultural barriers. Consequently, although the United States also enacted broad reforms in Japan's government, including a new constitution, General MacArthur used the remaining, nonmilitant civilian Japanese government as an intermediary.³⁹ MacArthur's actions, therefore, recognized the reforming nature of the existing (but displaced) sovereign government that would ultimately resume authority for Japan once the U.S. occupation ceased.

In any event, from a legal perspective, the motives for, and circumstances of, the occupation are irrelevant in assessing the commanders' responsibilities toward the populace.⁴⁰ The occupation must be actual (either at the request

of the sovereign or having overcome resistance) and effective (having taken measures to establish authority).⁴¹ Furthermore, authority can be established through a fixed presence or via mobile forces, as long as the occupying force “can, within a reasonable time, send detachments of troops to make its authority felt within the occupied district.”⁴²

Occupier’s Authority

Although international law contemplates only temporary military occupation, it confers significant powers and authority to the occupying power, so that in the absence of the displaced sovereign government, the occupying force may maintain order and administer the territory.⁴³ For instance, although Article 43 of the Hague Regulations requires the occupying force to respect “the laws in force in the country,” the occupying force’s military and civilian personnel are ordinarily immune from the provisions of local law, unless the occupying commander states otherwise.⁴⁴ This immunity provision grants the occupying force great latitude to provide security, conduct raids, and destroy property as required by military necessity. It is not, however, an unlimited license to commit abuses or atrocities, since occupying personnel remain subject to their own criminal laws and liability systems. In fact, international law narrowly specifies the nature and extent of the occupier’s authority, because “the fundamental premise of occupation law has been to confine the occupying power to the humanitarian objectives that preserve the status quo, not to entitle the occupying power to transform the territory it holds.”⁴⁵ These authorizations “permit the occupying power to control or exert influence over almost every aspect of life within the territory,” enabling the commander to establish order and security, thereby protecting civilian inhabitants and preserving existing institutions.⁴⁶

Occupier’s Obligations

Once a commander exerts effective control over the territory and population, international law and U.S. law of war policy impose a wide range of obligations.⁴⁷ Often mistakenly characterized as “mission creep,” these obligations can quickly outpace the resources and capacity of a unit focused primarily on establishing security, so planners must staff and equip the occupation forces appropriately. At a minimum, planners and commanders must be prepared not only to restore and ensure public order and safety, but they must also have plans to provide employment opportunities for the population, as well as to maintain hospitals and public health services.⁴⁸

Occupier’s Limitations

In addition to these affirmative duties, occupation law defines a category of “protected persons” who are to be safeguarded during the course of the oc-

cupation. Article 4 of Geneva Convention (IV) on civilians defines *protected persons* as “persons. . . who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.”⁴⁹ International law prohibits commanders from a variety of actions that would facilitate mission accomplishment, including forcing inhabitants to provide information about enemy forces or defenses; using mass punishments; and compelling protected persons to serve in the occupying force’s military or auxiliary forces.⁵⁰

Occupation and Nation Building

Although section two of chapter 13 of the *Small Wars Manual* does address some of the commander’s authority, including the ability to censor the media and newspaper and regulate commerce, it does not address the obligations or limitations that international law imposes upon the military governor. For example, the manual fails to inform commanders about their affirmative duties to restore and maintain public order; respect family honor, life, or religious practices; provide for the educational and developmental needs of children; maintain hospitals and public health; or ensure the public’s access to food and medicine. While many of these things are tactically sound, commonsense considerations for establishing and maintaining stability, they are not mentioned in the *Small Wars Manual*. Given that these are treaty obligations, they should be specified in the manual to help commanders prioritize their efforts and meet these requirements.

Next, consider how the 2003 invasion and occupation of Iraq demonstrated the tensions between the law of occupation and principles of nation building. Specifically, the Coalition operation that was premised on Saddam Hussein’s repeated defiance of UN Security Council Resolutions and Coalition concerns about Iraq’s weapons of mass destruction production and delivery capabilities. The operation was “intended to be a transformational process following liberation from a despotic and criminal regime.”⁵¹ The United States’ “stated purpose was ‘regime removal,’ not regime change. [This] reflected a crucial distinction about the basic understanding of the purpose of the war and the limits of military operations . . . [and] suggested that removing Saddam and his lieutenants was a sufficient goal.”⁵² Interestingly, despite all of the rhetoric about Coalition forces entering Iraq as “liberators, not occupiers,” on 22 May 2003, the Security Council adopted Resolution 1483, noting the United States’ and UK’s acknowledgment of the “specific authorities, responsibilities, and obligations under applicable international law of these states as occupying powers under unified command.”⁵³

As discussed above, however, occupation law “trusteeship” is broad in scope, focused on the preservation of existing systems. Therefore, “promoting

the welfare of the Iraqi people, though laudable, is a goal that [could not] be guided by occupation law alone, regardless of how liberally it may be construed. To pull Iraq out of its perceived repressive past and return it to the community of civilized nations,” the Coalition had to use international human rights law, principles of democratization, and economic incentives to promote domestic security.⁵⁴ Recognizing these challenges, the Security Council invoked the use of force provisions contained in chapter 7 of the UN Charter. Specifically, the Security Council directed the Coalition to develop an interim Iraqi administration focused on promoting “the welfare of the Iraqi people through the effective administration of the territory, including in particular working towards restoration of conditions of security and stability and *the creation of conditions in which the Iraqi people can freely determine their own political future.*”⁵⁵ Therefore, on the one hand, the Coalition acknowledged its obligations under occupation law, while on the other hand, the “[Security] Council specified additional obligations not required by occupation law, but in doing so invited the [Coalition] to act beyond some of the barriers that occupation law would otherwise impose.”⁵⁶ Under this broader mandate, the Coalition was not only responsible for setting the conditions for Iraqi self-determination, but also for protecting hospitals, schools, power plants, oil facilities, nuclear facilities, and government buildings, and establishing and maintaining public order and safety.⁵⁷

Conclusion

Coalition experience following Saddam Hussein’s defeat in April 2003 demonstrates that chapter 13’s enduring themes are as relevant today as they were when the *Small Wars Manual* was published.

Warfighting has two important dimensions: winning the war and winning the peace. The United States excels at the first. But without an equal commitment to stability and reconstruction, combat victories can be lost. The military’s bravery, dedication, and skill is unsurpassed, but it must have the institutional and resource support from the U.S. government to succeed in securing the peace. The immediate post-combat phase of war requires a shift in rules of engagement, doctrines, skills, techniques, and perspective appropriate to the mission. Troops are expected to shift from destroying the enemy to engaging the populace, whether monitoring ceasefires, helping maintain public security where local institutions are lacking, or maintaining basic services and infrastructure. In Afghanistan and Iraq, where there is active armed resistance, these tasks require military forces to shift back and forth from combat to stability operations on a moment’s notice or conduct both simultaneously.⁵⁸

In fact, as Rand’s James Dobbins confirmed regarding the Baghdad experience, stabilizing and reconstructing Iraq seemed to be an inevitable consequence of the war. He suggested that the United States invest in the conflict

and post-conflict outcomes to win the war and create conditions for a better, more stable Iraq. For Americans, of course, the natural vehicle to do so included embedding democratic institutions in the new Iraq.⁵⁹ Thus, the *Small Wars Manual* should reflect a paradigm shift, specifically noting that while the military force may be the “first responder,” providing the secure operating environment for other government agencies as well as various humanitarian and nongovernmental agencies, ultimately a coordinated, interagency approach is required for lasting stability and success.⁶⁰

Furthermore, as recent history demonstrates, the United States will engage in more stability and reconstruction operations in the near future, as we seek to reduce the number of failed states that serve as sanctuaries for transnational terrorists. If the *Small Wars Manual* is to remain a useful and informative tool for tactical commanders contending with the challenges of military occupations, it should accurately articulate the obligations and limitations imposed by international law. By embracing the rules and incorporating them into the manual, we will provide guidance that is more accurate to our commanders, protect the rights of the indigenous population, enhance cooperation with potential Coalition partners, and ultimately increase the legitimacy of our operations, both locally and internationally.

Notes

1. Steve Bowman, *Iraq: U.S. Military Operations* (Washington, DC: Congressional Research Service, 2005), 4.
2. Christopher C. Conlin, “What Do You Do for an Encore?,” *Marine Corps Gazette* 88, no. 9 (September 2004): 74.
3. James Jay Carafano, *After Iraq: Learning the War’s Lessons*, Backgrounder no. 1664 (Washington, DC: Heritage Foundation, 2003), 8.
4. Thomas Donnelly, *Operation Iraqi Freedom: A Strategic Assessment* (Washington, DC: AEI Press, 2004), 46.
5. Conlin, “What Do You Do for an Encore?,” 79.
6. This examination, however, will not address domestic military occupation and the application of martial law within the United States, related topics that are briefly noted in chapter 13 of the *Small Wars Manual*. Specifically, this paper will examine Articles 42–56 of Hague Convention (IV) Respecting the Laws and Customs of War on Land (hereafter Hague Regulations), and Articles 47–78 of the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (hereafter Geneva Convention IV), as well as the legal principles contained in *The Law of Land Warfare*, FM 27-10 (Washington, DC: Department of the Army, 1956).
7. *Small Wars Manual*, FMFRP 12-15 (Washington, DC: Headquarters Marine Corps, 1940), 13-1-1.
8. *Small Wars Manual*, 13-3-2.
9. *Small Wars Manual*, 13-1-1.
10. *Small Wars Manual*, 13-8-6.
11. Samuel R. Berger, Brent Scowcroft, and William L. Nash, *In the Wake of War: Improving U.S. Post-Conflict Capabilities* (New York: Council on Foreign Relations, 2005), 13.

12. Carafano, *After Iraq*, 8.
13. *DOD Instruction (DODI) 3000.05, Stability Operations, Incorporating Change 1* (Washington, DC: Department of Defense, 29 June 2017), 1.
14. *DODI 3000.05*, 2.
15. *DODI 3000.05*, 2.
16. *Small Wars Manual*, 13-3-2.
17. *Small Wars Manual*, 13-3-2, emphasis added.
18. James Dobbins, “Nation-Building: The Inescapable Responsibility of the World’s Only Superpower,” *Rand Review* 27, no. 2 (Summer 2003); see also *Insurgencies and Counterinsurgencies*, FM 3-24/Marine Corps Warfighting Publication (MCWP) 3-33.5 (Washington, DC: Department of the Army, 2014), which addresses international law considerations in the context of occupation in a counterinsurgency in appendix D. The *Small Wars Manual* could adopt the language from the appendix as a starting point to address occupation law in a broader context for occupations that do—and do not—involve the existence of an insurgency.
19. David B. Rivkin Jr. and Darin R. Bartram, “Military Occupation: Legally Ensuring a Lasting Peace,” *Washington Quarterly* 26, no. 3 (2003): 87; and *Department of Defense Directive (DODD) 2311.01E, DOD Law of War Program* (Washington, DC: Department of Defense, 9 May 2006), 2.
20. Rivkin and Bartram, “Military Occupation,” 87.
21. David J. Scheffer, “Beyond Occupation Law,” *American Journal of International Law* 97, no. 4 (2003): 845, <https://doi.org/10.2307/3133684>.
22. *Military Occupation of Iraq: I. Application of IHL and the Maintenance of Law and Order* (Cambridge, MA: Harvard University, 2003).
23. Hague Regulations, Article 42.
24. *The Law of Land Warfare*, 138.
25. *The Law of Land Warfare*, 138.
26. *The Law of Land Warfare*, 139.
27. *Military Occupation of Iraq*.
28. Article 2, Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 12 August 1949 (Treaties and other International Acts Series 3365). Article 2 states: “In addition to the provisions which shall be implemented in peace-time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.”
29. Eyal Benvenisti, *The International Law of Occupation* (Princeton, NJ: Princeton University Press, 1993), 4.
30. *Small Wars Manual*, 13-1-1.
31. *The Law of Land Warfare*, 138.
32. Benvenisti, *The International Law of Occupation*, 6.
33. *The Law of Land Warfare*, 138.
34. Scheffer, “Beyond Occupation Law,” 845.
35. Article 2 (4), United Nations Charter, 1945. Absent a demonstration of defense of U.S. nationals or property interests under Article 51 of the UN Charter or a Security Council Resolution specifically authorizing the use of force under Article 43 of the charter, such actions today would constitute unlawful aggression.
36. Benvenisti, *The International Law of Occupation*, 91.
37. Benvenisti, *The International Law of Occupation*, 92.
38. Benvenisti, *The International Law of Occupation*, 92.
39. Benvenisti, *The International Law of Occupation*, 93.
40. *Military Occupation of Iraq*.
41. *The Law of Land Warfare*, 139.
42. *The Law of Land Warfare*, 139.

43. Col Lyle W. Cayce, “Liberation or Occupation? How Failure to Apply Occupation Law During Operation Iraqi Freedom Threatened U.S. Strategic Interests” (unpublished paper, U.S. Army War College, 2004), 3.
44. Hague Regulations, Article 43; and *The Law of Land Warfare*, 143.
45. Scheffer, “Beyond Occupation Law,” 845. See also *The Law of Land Warfare*, sections 368, 375–78; Hague Regulations, Articles 43, 53, and 54; and Geneva Convention Articles 51, 54, and 64, which authorize commanders to establish military, civilian, or mixed military/civilian administrations to manage the territory; to raise taxes to fund the reasonable costs of the occupation; to enact and enforce criminal laws; to establish courts; and even to censor the press and all forms of media.
46. Cayce, “Liberation or Occupation?,” 5.
47. *DODD 2311.01E*.
48. Additional obligations include preserving existing local laws, facilitating relief and religious organization access to the population, and supporting childcare and education facilities for children.
49. Geneva Convention (IV), Article 4.
50. Hague Regulations, Articles 44, 50; Geneva Convention (IV), Articles 31, 33, 51; and *The Law of Land Warfare*, 154, 164.
51. Scheffer, “Beyond Occupation Law,” 843.
52. Donnelly, *Operation Iraqi Freedom*, 40.
53. United Nations Security Council Resolution (UNSCR) 1483, 4761st meeting (22 May 2003), 2.
54. Scheffer, “Beyond Occupation Law,” 843.
55. UNSCR 1483, 2, emphasis added.
56. Scheffer, “Beyond Occupation Law,” 845.
57. Scheffer, “Beyond Occupation Law,” 847.
58. Berger, Scowcroft, and Nash, *In the Wake of War*, 13.
59. Dobbins, “Nation-Building,” 13.
60. *DODI 3000.05*, 2.